

Frequently Asked Questions about the Small Commercial Tax Credit Program

Eligibility for the Credit

How do I find out if my property is eligible?

Answer: Your property is eligible if it has one of the following designations:

1. Contributing property within a National Register Historic District
2. Individually designated property within the National Register of Historic Places
3. Contributing property within a local historic district*
4. Local individually designated property*

You can find a list of National Register Historic Districts in Maryland on MHT's website at: http://mht.maryland.gov/research_nationalregister.shtml. MHT's database, Medusa, can also be used to find information on your property and whether it is within a historic district or individually designation in the National Register by searching your address or historic district name. County governments and municipalities maintain lists of locally designated historic properties. Contact your local planning office for information. *Local designations must also meet National Register criteria for eligibility, a determination made by MHT.

How do I find out if my property contributes to the significance of a National Register or local historic district?

Answer: This is the purpose of the Part 1 application, "Certification of Significance." Nomination forms for both the National Register and local historic designation lists may identify contributing properties within the district boundaries. Use the links above to find Maryland's National Register Historic Districts. Whether a structure contributes to the significance of a historic district is ultimately determined by MHT based on all available documentation.

What is the difference between a contributing property within a historic district and an individually designated property?

Answer: A contributing property within a historic district will be included in the National Register nomination for a multi-property district. Although some properties may be specifically called out in the nomination form, this does not mean the property is individually designated. An individually designated property will have a National Register nomination form separate from a district. If you are looking at MHT's Medusa database, a purple boundary line around multiple properties is a district designation, while a purple boundary line around a single property is an individual designation. Some properties may be both individually designated and within a historic district.

My building is in a National Register Historic District. Do I need to submit a Part 1 application?

Answer: Yes. Contributing properties within a historic district must still be certified as an historic structure. MHT uses the Part 1 application to review the integrity and significance of the property with the historic district designation. Only those properties that are individually designated in the National Register of Historic Places are exempt from submitting a Part 1 application.

I am working on designating my property but want to get started on the rehabilitation project now. Can I submit the Part 1 and Part 2 applications before my property is officially designated?

Answer: You may apply for the tax credit once a draft nomination has been submitted to MHT. The tax credit program statute requires that a structure be officially designated, either by the local government or the National Register, by the end of the calendar year in which the rehabilitation project was completed. Failure to receive this designation by the required deadline will result in the rehabilitation being ineligible for the tax credit.

Can lessees of a property apply for and claim the small commercial tax credit?

Answer: Possibly. Qualified ownership leases may be eligible for the credit. Contact MHT staff for more information.

The property is my personal residence; however, I run a small business out of the basement. Can I apply for the small commercial tax credit?

Answer: No. The property must be primarily income producing and be assessed as a commercial property by the Maryland Department of Assessment and Taxation. In this case, you may apply for the homeowner tax credit and receive pro-rated credit based on the portion of your home that is exclusively your owner-occupied residence.

My building will consist of 100% rental residential units. Is my project eligible for the small commercial tax credit?

Answer: Yes.

I am a developer rehabilitating a residential building that I intend to sell for exclusive occupancy to a residential owner. Am I eligible for the small commercial program?

Answer: Yes. MHT suggests that the rehabilitation be finished before the sale of the property. QREs are expenses that are incurred by a commercial entity while the entity owns the property. QREs that are incurred by the residential owner will not qualify for tax credit purposes.

I am a developer with an approved homeowner application. Can I withdraw the homeowner application and submit a small commercial application for the property instead?

Answer: Possibly. If an applicant with an open homeowner application wants to submit a small commercial application for the same project, the applicant must withdraw the homeowner application and submit an entirely new small commercial application. Only expenses incurred after the small commercial Part 2 is certified will be eligible for the credit. If the project has already been substantially started under the existing homeowner application, MHT cannot approve a Part 2 for the project under the small commercial program.

I own a mixed-use property that contains 50% restaurant (commercial) use and 50% residential-rental use. Are the expenses for the residential-rental portion eligible?

Answer: Yes, if the costs are determined by MHT to be qualified rehabilitation expenditures.

I own a bed and breakfast, a portion of which is my residence. Am I eligible for the small commercial credit?

Answer: Possibly. If the building is used primarily for income-producing purposes as a bed and breakfast, then rehabilitation of the building would be eligible for the small commercial tax credit program. However, if use as a commercial bed and breakfast is not the primary use, then it would not qualify.

Questions about Qualifying Rehabilitation Work

I understand that work must be undertaken within a 24-month period. When does that start?

Answer: The 24-month period may start when eligible pre-construction costs related to the rehabilitation project are incurred. This could include certain fees as described below. If there are no pre-construction costs, the 24-month period starts when actual construction work begins after MHT certifies the Part 2 application.

Are architectural fees eligible?

Answer: Yes. Architectural, engineering, and similar consultant fees, including tax credit consultant fees, are eligible. Expenses incurred in order to prepare the application are eligible; however, in order for these fees to be included in the total rehabilitation costs, they must have been incurred within the 24-month period as described above.

Are deposits paid prior to the Part 2 application approval eligible for the tax credit?

Answer: Yes, if the work itself does not start until after the Part 2 application has been certified by MHT. Deposits are costs to secure a contractor, architect, etc. and are not payments in full. Materials purchased prior to the Part 2 application approval may not be eligible. In general, a deposit for services is a partial payment, not full payment.

Are costs associated with a building energy audit inspection eligible?

Answer: No. These costs are not eligible.

What about acquisition costs, financing charges, and building permit fees?

Answer: No. These costs are not eligible.

Are plumbing, HVAC, and electrical systems costs eligible?

Answer: Yes. These costs are eligible.

Are landscaping and site work costs eligible?

Answer: In general, costs for work associated with landscaping features such as driveways, sidewalks, retaining walls*, gardens, etc. are not eligible. The costs associated with the rehabilitation of significant historic landscape features, such as parterre gardens, walls, fountains, fences, etc. may be eligible when there is sufficient documentation of the feature's historic significance and contributing status.

*Retaining walls that are integral to the structure of the building may be eligible.

Are solar panels considered eligible expenses?

Answer: Possibly. The scale, location, visibility, and installation of the solar panels must meet all requirements of the Secretary of the Interior's Standards for Rehabilitation. The system must be purchased, not rented or leased from a supplier. Solar fields or wind turbines that are detached from the structure but only service the property are eligible.

Are gutter cleaning and chimney sweeping eligible expenses?

Answer: These expenses are not eligible unless they are part of an overall repair project to the gutters or chimney. Expenses that are solely for cleaning of these features are not capital expenses and therefore not eligible for the credit.

The restrooms in my office building were last remodeled in the 1980s. I want to renovate them, but I'm not sure if it will be considered "remodeling only." Can you provide guidance?

Answer: The rehabilitation of spaces with no or few defects is likely to be determined to be remodeling and the costs are thus not eligible for the credit. As noted below, the overall purpose of the tax credit program is to "return a structure to a state of utility." Many bathroom projects include no work that would be considered rehabilitation.

"'Rehabilitation' means the process of returning a structure to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the structure and its site and environment which make the structure and its site and environment historically, architecturally, or culturally significant. 'Rehabilitation' does not include an alteration which is primarily remodeling."

Projects described in a proposed plan of rehabilitation submitted with the Part 2 application and determined by MHT to be primarily remodeling will not qualify for the tax credit program. Projects that include appropriate rehabilitation of deteriorated spaces and spaces that function but have reached the end of their useful life, including kitchens and bathrooms, will continue to be considered rehabilitation work and eligible for the program. Eligibility will be determined as part of the Part 2 application review.

Are additions, new patios, new back decks, new roof decks, or similar new construction eligible?

Answer: No. The costs for new construction are not eligible for the credit. However, the work must still be reviewed and approved for compliance with the Secretary's Standards for Rehabilitation along with the eligible work items. If you are proposing a new addition, it is recommended to reach out to tax credit staff prior to submitting the application to discuss your project and whether it may comply with the Standards.

I plan on building an addition as part of the rehabilitation project. Do I have to include that work in my application even though it is not eligible for the tax credit?

Answer: Yes. All work to a property during the rehabilitation period, whether eligible for the credit or not, must be reviewed by MHT to ensure compliance with the Secretary's Standards for Rehabilitation. Any proposed new construction, site work, and landscaping must be included in the Part 2 application or subsequent Amendment form and be clearly shown as ineligible expenses on the Part 3 application. Any work undertaken, even if ineligible for the credit, that is determined non-compliant with the Standards may jeopardize the credit for all work.

Are rehabilitation costs for barns, garages, and other outbuildings eligible?

Answer: If these structures are historically associated with the commercial structure and contribute to the significance of the property / district, then the rehabilitation costs may qualify. Non-historic detached structures are not eligible.

The building has a rear addition that was built in the 1980s and needs to be rehabilitated. Do these costs qualify?

Answer: Yes. Existing additions to historic structures are considered part of the overall structure, even though they do not have historical significance. Changes to these additions must still be reviewed for conformance with the Secretary's Standards for Rehabilitation.

Are interior finishes eligible?

Answer: Interior capital expenditures are eligible for the credit. This typically means finishes that become part of the structure. Eligible costs may include repair or restoration of wainscoting, mantels, interior shutters, trim and molding, floors, plaster, and paint. Items that are not eligible include, but are not limited to: appliances, carpets, drapery, window treatments, pictures, furniture, and closet shelving installation. Consult MHT tax credit staff for a final determination of eligibility.

My building retains historic walls. I want to remove a wall or portion of a wall to create an open concept floor plan to better meet the needs of the commercial and/or residential tenants. Is this qualifying work?

Answer: Possibly. Although the open floor plan concept has become increasingly popular, typically the removal of an historic wall or portion of a wall is not an appropriate treatment for historic properties. The removal of historic material (walls) alters the existing spatial relationship between rooms that were historically separate for design, function, and formality. The historic floor plan is significant and character-defining of the property. Removal of a wall or portion of a wall may be considered if there is evidence that the wall did not exist in that location historically (i.e. – it was installed during a more recent renovation). Each project is reviewed on an individual basis.

My property had vinyl windows installed by a previous owner. If I am not planning to remove them as part of my rehabilitation project, will my project still be eligible for the tax credit?

Answer: Yes. MHT will not require owners to replace non-historic materials installed by a previous owner if there is not work planned for this feature. However, if replacement of the window is proposed, they must be replaced with a historically appropriate window.

If the property is damaged and I am reimbursed by my insurance company to pay for the repairs / restoration, can I include those expenses in my Total Qualified Rehabilitation Expenditures on the Part 3 application and claim a credit for them?

Answer: No. Expenses reimbursed by an insurance company cannot be claimed. These costs must be subtracted from the Total Qualified Rehabilitation Expenditures on the Part 3 application and must be documented as such in the Itemized Expense Spreadsheet submitted with the Part 3 application. Note: For this reason, insurance proceeds should not be factored into the Part 2 Estimated Rehabilitation Expenditures (QRE) total amount.

If I will be receiving additional funding to help with the rehabilitation of my property from any State or local government agencies, such as grants, loans, or State energy tax credits, can I claim these expenses as well toward the tax credit?

Answer: No. Additional funding such as State or local grants, loans, or State tax incentives from a State agency or local government are not eligible and must be subtracted from the Total Qualified Rehabilitation Expenditures on the Part 3 application. However, any anticipated funds from a local tax incentive program do not need to be subtracted from the final qualified rehabilitation expenditure amount. This must be documented on the Itemized Expense spreadsheet with the Part 3 application. State loans given at a non-discounted rate may be eligible. Contact tax credit staff for additional guidance.

What if I am receiving additional funding from a Federal agency, such as a Federal energy tax credit? Do I need to back these costs out of the final rehabilitation expenditure total on the Part 3 application as well?

Answer: No. Additional funding from a Federal agency that pertains to the rehabilitation of your property does not have to be subtracted from the qualified expenditures on the Part 3 application.

I am still within my 24-month period and have additional projects and/or a change to the approved scope of work. What do I need to do?

Answer: If at any time during work you find additional work items you'd like to undertake or have changes to the approved scope of work, you must submit an Amendment form. These are found on MHT's Small Commercial tax credit website with the Part 1, Part 2, and Part 3 applications. Like the Part 2 application, new work or changes to approved work on an Amendment form must be reviewed and approved by MHT prior to commencing those work items to be eligible for the credit. You may submit as many Amendment forms during the 24-month period as necessary.

The Review Process

How long will it take MHT to process my application?

Answer: Applications are handled on a first-come, first-served basis. MHT's review of a complete application is generally 30-45 days but may differ depending on the volume of tax credit applications. Also effecting the review period is the completeness and clarity of the application. Please be sure you have read through ALL the FAQs, application instructions, and the Mandatory Application Checklist (found at the end of each application) prior to submitting your application. It is important to note that the Small Commercial program is currently capped at \$4 million. The credit for your project will be capped at the Estimated Rehabilitation Expenses amount on your Part 2 application and is not reserved for your project until the Part 2 application has been certified with an initial credit certificate.

Is there a fee for reviewing my application?

Answer: There is no review fee for the Part 1 application. The Part 2 application must be accompanied by a \$10 processing fee in the form of a personal check. The Part 3 application review fee is 3% of the amount of the tax credit for the rehabilitation project less the initial \$10 processing fee submitted with the Part 2 application. The final fee payment is payable only by personal check to the Maryland Historical Trust. For additional information on review fees, please read the application instructions.

Can I begin the rehabilitation before my application has been approved?

Answer: Any work started and/or completed prior to MHT's review and approval is not eligible for the tax credit. This work would start the 24-month period and must still be reviewed for compliance with the Secretary's Standards for Rehabilitation. Work started and/or completed prior to approval may jeopardize the credit for the entire project if it does not conform to the Secretary's Standards. It is important to note that if a small commercial project is substantially started prior to the Part 2 approval, the project will be disqualified from the small commercial tax credit program. MHT recommends waiting until you have a Part 2 application approval to start any work.

Last year, I completed a rehabilitation project but only recently heard about the State tax credit program. Can I still apply for the credit?

Answer: No. Completed projects are not eligible for this program. Qualified rehabilitation expenditures are only those incurred AFTER the Part 2 application is certified by MHT.

I have a million-dollar rehabilitation planned. Can I complete half of it, and then apply for the small commercial tax credit to cover the remaining \$500,000?

Answer: No. If MHT has reason to suspect that the overall project was more than the program limit of \$500,000, the project may be disqualified.

I am undertaking a \$250,000 rehabilitation with a \$500,000 planned addition. Does this project exceed the \$500,000 limit?

Answer: No. The \$500,000 limit refers to Qualified Eligible Expenditures. New construction is not a qualified expenditure, so the cost of the proposed addition is not counted toward the \$500,000 limit.

My local historic preservation commission has already approved my rehabilitation project. Do I also need MHT's approval to begin work?

Answer: Yes. If you anticipate utilizing the state tax credit, MHT must review and approve the Part 2 application prior to starting work. MHT is the only agency charged with administration of the state tax credit program. Therefore, a local or federal approval does not override MHT's review and approval, and vice versa.

Can I apply for the federal credit as well? If so, do I have to submit three applications and three sets of photos and supplemental information?

Answer: If you meet the eligibility requirements for the federal tax credit program, you can apply for both the federal and state programs. You must submit two federal applications with two sets of all information and documentation, as well as one copy of the state application.

What are the Secretary of the Interior's *Standards for Rehabilitation*?

Answer: The Secretary of the Interior's Standards for Rehabilitation are a set of ten guidelines for the treatment of historic properties set forth by the National Park Service.

How does MHT interpret the Standards for purposes of the State tax credit program?

Answer: MHT takes a conservative stance on the interpretation of the Secretary's Standards. If you have questions about whether your proposed project will comply with the Standards for the state tax credit program, MHT recommends contacting tax credit review staff for initial guidance prior to submitting the application.

It appears that there are some differences in how local, state, and federal agencies interpret the Standards. Why aren't the Standards interpreted uniformly regardless of which agency applies them?

Answer: MHT cannot speak to the way in which preservation professionals from other agencies interpret the Standards. In the event that there is a difference in the way MHT and any other agency interprets the Standards, the MHT's interpretation will be final for the purpose of the state tax credit program.

I submitted a Part 2 application to the tax credit program last year; however, the Part 2 was denied for proposed work not meeting the Standards. Can I re-apply now with a new Part 2 for additional proposed work to my property?

Answer: Yes. If you did not complete the denied work, then you must provide MHT proof that you have not done any of the work that was denied in the previous Part 2 application in the interim. If you did complete the denied work from the previous Part 2 application, then this would negate your ability to apply for the state tax credit for 24-months from when the non-compliant work was completed.

I just completed my project and have a certified Part 3 application for \$250,000 of qualified rehabilitation expenditures. Even though that phase of the project is finished, I still have more work to do. Can I submit another Part 2 application for the additional work to be completed this year?

Answer: No. The statute for the small commercial tax credit program limits the amount of eligible rehabilitation costs to \$250,000 in any one 24-month period. In other words, a project cannot be

awarded more than \$50,000 in tax credits within a contiguous two-year period. Additionally, applicants cannot submit more than one completed Part 3 application for certification within a single, taxable year.

Does all the work I'm undertaking within the 24-month period have to comply with the Secretary of the Interior's Standards for Rehabilitation?

Answer: Yes. All work, whether eligible for the credit or not and whether you are claiming the credit for it or not, must comply with the Standards. All work anticipated within the 24-month period, regardless of eligibility, must be described in the Part 2 application or subsequent Amendment form for review and approval for compliance with the Standards. Alterations that do not meet the Standards and were not included in the Part 2 application or an Amendment form may result in a denial of the entire application.

If the rehabilitation work described in my Part 2 application is for the exterior only, why do I need to submit photographs of the interior of my property?

Answer: The MHT is required, for auditing purposes, to verify that all work was completed in accordance with the project approval and that all work complies with the Secretary's Standards for Rehabilitation. These photographs establish a baseline record of the entire property at the time the tax credit application is submitted. Upon completion of the project, the Part 2 photographs (pre-rehabilitation) and Part 3 photographs (post-rehabilitation) are used for a comparison review to ensure only the approved work was completed and all work complies with the Standards. If a full set of interior and exterior photographic documentation of the property prior to rehabilitation is not provided, review and evaluation of the Part 2 application cannot be completed and may result in a denial of the application.

Does it matter when the photographs of my property were taken?

Answer: Photographs submitted with the Part 1 and Part 2 applications provide a baseline of current conditions for the Part 2 application review. It is in the owner's best interest that photographs be current with the time in which the application is being submitted. Generally, MHT does not accept photographs that are more than 90-days old as these may not accurately represent the property as it exists at the time the application is received and reviewed. Photographs submitted with the Part 3 application must be a complete new set (post-rehabilitation) of the entire exterior and interior of the property, even where no work was undertaken. MHT must be able to verify that only the approved work was completed and that all completed work complies with the Secretary's Standards for Rehabilitation. The Part 2 (pre-rehabilitation) and Part 3 (post-rehabilitation) photographs are compared side-by-side during the Part 3 review.

How is the review of my application impacted by other relevant or applicable laws?

Answer: The property owner is responsible for complying with all federal, state, and local laws applicable to the project. This responsibility may include, but is not limited to, compliance with local zoning, building, and life safety codes; review by local historic preservation commissions; and federal and state licensing, permitting, and environmental requirements. Note: Certification from MHT of a final project in no way constitutes compliance with any of the above laws or regulations.

Questions about the Part 3 Application

When are Part 3 applications due?

Answer: There is no deadline for submitting a Part 3 application. The tax credit is claimed in the taxable year in which the entire project is completed. MHT recommends submitting a Part 3 by February 1st to ensure the review is completed prior to the April filing deadline with the Comptroller. If you are unable to submit prior to February 1st, it is MHT's understanding that you may amend your taxes and/or request a filing extension with the Comptroller. All questions about amending your taxes, filing for an extension, or claiming the credit should be directed to the Comptroller's Office.

I decided not to undertake some of the approved work described in my Part 2 application. What should I do before submitting the Part 3 application?

Answer: You should include an Amendment form with the Part 3 application stating what work you did not undertake. If you wish to undertake that work in the future, you must file a new Part 2 application. The new Part 2 application is a stand-alone file that must include all required information showing the current state of the property at the time of the new submission.

How should I document expenses in the Part 3 application?

Answer: The Part 3 Itemized Expense Sheet, filled out according to the Part 3 Itemized Expense Sheet Instructions, must be submitted with your Part 3 application. Eligible and ineligible expenses must be clearly delineated. For each item on the spreadsheet you must include (1) a copy of the invoice or receipt, showing which goods or services were purchased, and (2) certifiable proof of payment corresponding to invoices, which may consist of one of the following:

1. A dated credit card receipt
2. A copy of a cancelled check
3. A bank statement showing the check number, date, payee name, and amount paid
4. A signed statement from the contractor or vendor stating the date and amount paid (an invoice simply marked 'PAID' or '\$0 Balance' is not sufficient). Generally, signed statements will only be accepted when the payment was made in cash.

Please submit copies of the proof of payment with sensitive information and account numbers redacted or blacked-out for security purposes. The Part 3 Itemized Expense Sheet can be downloaded from MHT's small commercial website.

My final project was over \$250,000. Do I need to submit paid invoices and proof of payment for the remaining costs that I will not get a credit for?

Answer: Yes. MHT must verify that the project does not exceed the \$500,000 limit for the small commercial program.

My estimated project costs in the Part 2 were \$500,000, which exceeds my final QRE of \$250,000. What is my Part 3 review fee based on?

Answer: The Part 3 review fee is based on the estimated credit amount on the Part 2 application, which is \$50,000 for projects with estimated qualified expenditures (QRE) of \$250,000 and up. Therefore, the fee would be \$1,500 minus the \$10 Part 2 fee = \$1,490.

Claiming the Credit

Is the credit fully refundable? Do I just get a check?

Answer: To the extent the credit exceeds the taxpayer's tax liability, the credit is refundable. You must file for the credit with the Comptroller of Maryland for the tax year in which the entire project as described in the Part 2 was completed. Use Maryland Form 502S specific to the year in which you are filing. The certified Part 3 application must be attached to the Form 502S. Questions about claiming the credit should be directed to the Comptroller of Maryland's office.

Can a non-resident of Maryland claim the credit / refund?

Answer: Yes. The program has no restrictions on residency.

Do I have to pay federal income taxes on the refund the following year?

Answer: Possibly. The IRS considers the State income tax refund to be taxable income. Questions about federal taxes should be directed to the IRS.

Can I apply for the Small Commercial tax credit more than once?

Answer: Yes. You may submit a new application every 24-months. However, you may not exceed \$500,000 in rehabilitation expenses in a 24-month period and may not claim more than a \$50,000 tax credit (\$250,000 in eligible costs) in a 24-month period.

I am finishing my project and want to apply for the extra 5% or 7.5% Opportunity Zone credits but did not elect this option on my Part 2 application. Can I still claim the additional credits?

Answer: No. You must have elected one of the Opportunity Zone credit options on the Part 2 application, and potential qualification for the additional credit must be reflected on the initial credit certificate.

Recapture Rule

I received tax credits for a rehabilitation project certified by MHT one year ago. If I plan to do additional work on the same structure this year that will not conform to the Secretary's Standards, do I risk losing my previous credit?

Answer: Yes. If disqualifying work is undertaken on a property that has received tax credits, the credits will be recaptured. Below is a chart showing the percentage of recapture per year after the credit has been claimed:

Year 1	100%
Year 2	80%
Year 3	60%
Year 4	40%
Year 5	20%

After 5 years, the credit is not subject to recapture.

I received tax credits for a rehabilitation project certified by MHT within the past five years. I now have additional work I'd like to undertake on the same structure and don't plan to claim the credit, but don't want to cause a recapture of my previous credit. What do I need to do?

Answer: If you plan to undertake additional work after claiming the credit, but don't plan to claim the credit, you should submit an Amendment form describing all new work you anticipate. MHT will review to ensure the new work is compliant with the Standards without cause for recapture. The Amendment form will be added to your previous tax credit file as an update to the file.

If I sell the property after completion of the project and then disqualifying work is performed, will my tax credit be recaptured?

Answer: No. A property may be sold after claiming the tax credit. If the new owner undertakes disqualifying work, the previous owner is not responsible and will not be subject to a recapture of the credit.